

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Eric Little,

Complainant,

vs.

San Diego Gas and Electric Company,

Defendant.

Case 04-08-011
(Filed August 10, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING SETTING PREHEARING
CONFERENCE AND REQUIRING PREHEARING CONFERENCE
STATEMENTS**

This proceeding arises from Advice Letter 1520-E (AL 1520-E), submitted September 9, 2003, by defendant San Diego Gas and Electric Company (SDG&E). In AL 1520-E, SDG&E described its project to construct a new 10-mile long, 69 kilovolt (kV) tie line (number 6942) from Sycamore Canyon Substation to Scripps Substation and then to Miramar Substation. SDG&E proposed to install new conductor on existing SDG&E pole lines, including intersetting new poles and replacing some poles, and to underground a portion of the new line in SDG&E franchise and easement positions that parallel an existing underground power line (project). About eight miles of the project would be overhead, and two miles underground.

SDG&E claimed exemption from the requirements for a Permit to Construct (PTC) under GO 131-D because the overhead portion of the construction would be putting additional conductors on structures already built (GO 131-D, § III, subd. B.1(e)) or intersetting poles (subd. B.1(c)), and the underground portion would be located in existing SDG&E franchises or easements (subd. B.1(g)). No protests were filed to the advice letter, which then became effective October 19, 2003.

In the spring of 2004, residents in the vicinity of the project contacted Commission staff with objections to the project. By letter dated July 28, 2004, staff informed the objecting residents that their objections were too late to be considered as protests to the project. This complaint was subsequently filed by Eric Little pursuant to section XIV.A of GO 131-D.¹

In the complaint, Little alleged that SDG&E violated GO 131-D and the California Environmental Quality Act (CEQA), Pub. Res. Code section 21000 *et seq.*, in a number of ways:

- failing to give proper notice of the project to affected residents;
- failing to conform the Notice of Proposed Construction to the text of AL 1520-E;
- improperly claiming exemption from the PTC requirements for the replacement of existing poles;

¹ Eric Little is the only named complainant. He is vice president of the Loire Valley Homeowners' Association, an association of homeowners in the vicinity of the project. In response to a question raised by SDG&E, he submitted the signatures of over 100 homeowners attesting to their knowledge of the complaint and their willingness to have it go forward.

- improperly claiming exemption from the PTC requirements and CEQA by failing to take account of the effects of the Cedar fire in the project area;
- improperly claiming exemption under subd. B.1.(g) without producing an Environmental Impact Report (EIR) or Negative Declaration;
- improperly using the exemptions in GO 131-D to allow construction of a completely new line;
- failing to comply with CEQA Guidelines § 15300.2 and thus jeopardizing habitat of the California gnatcatcher.

Little also represented that construction was scheduled to begin on August 5, 2004 and could be completed prior to final adjudication of the merits of the complaint. He therefore requested a Temporary Restraining Order (TRO) to halt construction pending adjudication of this case.

In response to the Administrative Law Judge's (ALJ) Ruling Requiring Response to Request for Temporary Restraining Order, dated August 20, 2004, SDG&E provided additional information about the project, including a scheduled starting date of September 20, 2004 and a projected completion date of May 20, 2005. SDG&E argued that a TRO should not be issued. At the hearing on the TRO request on September 3, 2004, the ALJ heard argument from Little and SDG&E and admitted into evidence Little's declaration, with attachments, and a declaration of Ylianna Romo, a Loire Valley Homeowners' Association member.

At the TRO hearing, the ALJ also requested that SDG&E supply additional information about the project, the project schedule, and construction methods not later than noon, September 13, 2004. On that date, SDG&E provided large maps showing details of the project's location; an SDG&E document titled "TL6942: New 69KV Sycamore Canyon to Miramar WO 2803120; BP 02161.1,"

including a general description of construction methods and detailed photos and maps of the project area; a copy of SDG&E's 1995 Subregional Natural Community Conservation Plan (NCCP); and supplemental information about construction methods and impacts.

SDG&E did not provide the information requested by the ALJ about the project's construction schedule. Instead, it proposed that it could wait until January 15, 2004 to begin construction on the project, completing construction of what it characterized as "the reconductored circuit" by summer 2005, but leaving incomplete "the new circuit." SDG&E asserted that this plan would increase capacity, but not provide the full reliability benefits of the project as described in AL 1520-E. SDG&E asserted that the delay was contingent on the evidentiary hearing in this proceeding not beginning before December 1, 2004, and on the inclusion in the proceeding of the issue of the propriety of SDG&E's invocation of the subd. B.1(g) exemption for the underground portion of the project work.

Review of the complaint and submissions related to the TRO request make clear the need for an early prehearing conference (PHC) to identify the issues that may require an evidentiary hearing (EH) and the issues that may be disposed of without an EH, and to set a schedule for prompt disposition of this proceeding. The TRO request will be held in abeyance pending the PHC.

A prehearing conference (PHC) before ALJ Anne E. Simon is therefore set for 10:00 a.m. on Monday, September 27, 2004 in the Commission courtroom in San Francisco.

Pursuant to Rule 6.2 of the Commission's Rules of Practice and Procedure, the parties must each also file and serve PHC statements.² The parties may, but are not required to, confer in the preparation of their PHC statements. The PHC statements must address the following topics:

- the party's present positions on each of the claims raised in the complaint;
- which, if any, claims may be resolved without an evidentiary hearing (EH);
- the factual and legal issues involved in each such claim;
- which, if any, issues will require an EH;
- the factual and legal issues involved in each such claim;
- any issues regarding the applicability of the NCCP to the project;
- the party's interest in participating in the ALJ Division's mediation program to further the prospect of settlement of this matter; and
- a proposed schedule for the balance of this proceeding.³

In addition, Little should include a statement of his objections, if any, to the environmental impact of the construction methods described by SDG&E in its supplemental submissions of September 13, 2004. SDG&E should include a detailed explanation of the schedule for the project as proposed in AL 1520-E; a detailed explanation of and schedule for the project to begin January 15, 2005 as SDG&E has proposed in its submission of September 13, 2004, including a

² The Rules of Practice and Procedure are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

³ Pursuant to Pub. Util. Code § 1701.2, this adjudicatory proceeding must be concluded within 12 months of the date of the complaint was filed.

description of the recondutored circuit and the new circuit; and a copy of its Best Management Practices, as referred to in Timothy Moore's supplemental information statement submitted September 13, 2004.

The PHC statements must be filed with the Commission's Docket Office and served (*i.e.*, received by all persons on the service list) no later than the close of business Thursday, September 23, 2004.

IT IS RULED that:

1. A prehearing conference in this matter is scheduled as set forth above.
2. The parties shall file and serve prehearing conference statements as set forth above.
3. The complainant's request for a Temporary Restraining Order is held in abeyance pending the PHC.
4. SDG&E may not begin construction of the project prior to the PHC unless it has consulted Commission CEQA staff with regard to erosion control and other construction mitigation measures.

Dated September 14, 2004, at San Francisco, California.

/s/ Anne E. Simon

Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on Setting Prehearing Conference and Requiring Prehearing Conference Statements on all parties of record in this proceeding or their attorneys of record.

Dated September 14, 2004, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.